(1962) 11 MAD CK 0049

In the Madras High Court

Case No : S.A. No. 453 of 1960

The State Of Madras APPELLANT

Vs

N.S. Krishnaswami Iyengar RESPONDENT

Date of Decision : 07-11-1962

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 72
Trusts Act, 1882 — Section 94

Citation : (1962) 11 MAD CK 0049

Hon'ble Judges : Sadasivam, J;Jagadisan, J

Bench : Division Bench

Advocate : V. Ramaswami, for the Appellant; V. Vedantachari and N.C. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

Sadasivam, J.—The State of Madras has preferred this second appeal against the decree and judgment of the Additional District Judge of Salem confirming the preliminary decree and judgment of the Subordinate Judge of Salem directing them to render an account of all collections made or ought to have been made by them between 18th July 1950 and 11th January 1954 including the arrears of rent due on 18th July 1950 and pay over such amounts as may be found due to the respondent-plaintiff. The respondent instituted the suit in the Sub Court, Salem, as the manager of the joint family consisting of himself and his nephews under the following circumstances. The joint family of the respondent-plaintiff are the owners of the suit village Byroji Agraharam in Salem Taluk. In a prior litigation it was held by the Privy Council that the village was the subject of an inam grant which fell within the meaning of an estate as defined by the Madras Estates Land (III Amendment) Act, 1936. The appellant took action under the Madras Estates Land (Reduction of Rent) Act, 1947 which we shall hereinafter refer to in this judgment for the sake of brevity as the R. R. Act. The respondent contended in the proceedings taken under the Act that all the lands situated in the Byroji Agraharam village are his private lands. Ex. A. 2 is the notice issued by the Special Deputy Tahsildar on 20th April 1950 under S. 3 (1) of the R. R. Act stating how he proposed to reduce the rent for ryoti lands in the estate. In his letter Ex. A. 6 dated 21st April, 1950, the respondent submitted that the fact'' that only seven people claimed occupancy rights In the lands cultivated by them will show that the others always treated themselves as his lessees'' and that ''none of the others even claimed any occupancy rights although more than 12 years had elapsed since the Act of 1936 was passed.'' The respondent sent subsequent letters Exs. A. 7 to A. 10 to the R. R. Special Officer and in the last letter Ex. A. 10 he has stated that he had ''no objection about the R. R. for wet and dry lands mentioned in S. 4 (1) notice'' but be objected only to the proposed rent for the garden lands. Ex. A. 1 Is the Notification in the Fort St. George Gazette dated 18th July 1950 issued under S. 3 (2) of the R. R. Act notifying the reduced rates of rent for the ryoti lands in the suit village. Ex. A. 3 is a copy of the communication dated 10th February 1952 sent by the Estate Manager to the headman and karnam of the inam villages that the rent as determined under the R. R. Act due in respect of ryoti lands should net be collected by the inamdars but only by the Government, that if there is any injunction order of civil Court in respect of the collection of rent, it should be obeyed and that the above facts should be notified by tom tom. The respondent produced his accounts to enable the village officers to prepare individual demands as per the R. R. Act. Finally, the Estate Manager issued the order Ex. A. 32 dated 28th December 1953 that there are no ryoti lands in the suit village, that the Government need not collect the reduced rent under S. 3 (4) of the R. R. Act in the suit village and that the landholder will be left to collect the lease amount due to him from his tenants as usual. Both the Courts below have held the appellant liable for the suit claim on the ground that they prevented the respondent from collecting the arrears of rent and the current rent during the period 18th July 1950 to 11th January 1954 by issuing the notice Ex. A. 1 and proclaiming it to the village officers and notifying by tom tom in the village.

2. The main point for consideration in this appeal is the scope of the Notification issued under S. 3 (2) of the R. R. Act. As pointed out in Ramaswami v. Krishnaswami ILR 1957 Mad. 1222 at (sic) 1231 =70 L.W. 802, the scheme of the R. R. Act was twofold; (i) the reduction of rents in an estate and (ii) that contained S. 3 (4) of the Act, viz., the rents so reduced being collected by the State Government. The reduction of the rents was to be effected only in respect of the rents payable by ryots, that is, on lands other than private lands of the landholder. If any particular land in an estate was a private land of the land owner, the Government would have no right to effect any reduction in the rents payable by tenants on such lands; nor could the Government collect such rents under the terms of S. 3 (4) of the R. R. Act. Under S. 1 (2) of the R. R. Act it applies to all estates as defined in S. 3, Cl. (2) of the Madras Estates Land Act, 1908. S. 2 of the R. R. Act provides for appointment of a Special Officer to recommend rates of rent in estates. Ex. A-2 shows that this has been done in

this case. It is clear from the rules framed under S. 7 of the R. R. Act that the enquiry under S. 2(1) of the Act shall be summary. Ex. A 6 shows that seven persons claimed occupancy rights in the suit village. The Special Officer has worked out the rate of reduction for wet lands, dry lands and garden lands as shown in Ex. A-4. In Ex. A-2 the reduced rent has been worked out on the basis of the rate of reduction mentioned in Ex A-4. But it is clear from the Notification that the reduction of rent is only in respect of ryoti lands.

3. The learned Advocate for the respondent argued that the average rate of rent cannot be worked out as contemplated in S. 2(2) (a) of the R. R. Act by the Special Officer unless there was at least one cent of ryoti land in the village on the date of the Notification and hence Ex. A-2 is illegal. But his argument is unconvincing as the existence of one cent of ryoti land or one holding of ryoti land would not be sufficient to work out the average rate of rent as the said expression could be aptly applied only if there is more than one holding of ryoti land in an estate. S. 3- A of the R. R. Act provides the machinery by which the Collector could determine in disputed cases whether the land in any particular holding is a ryoti land to which the reduced rent will apply or is the private land of the landholder, in which case the R. R. Act will not apply. The matter was considered by Anantanarayanan, J., in Estate of Madras v. Mohammed Ismail Rowther 73 L.W 258. The landholder in that case filed a suit for a declaration that the R. R. Act could not apply to his village. But the Court came to the conclusion that the village itself is an estate within the meaning of S. 3 (2) (d) of the Madras Estates Land Act. The landholder in that case con tended that the entire lands were his private lands and not ryoti lands and that the Notification was illegal as the purpose of the legislation was only to provide for reduction of rent in the ryoti lands. This contention was negatived by Anantanaryanan, J., who held the Notification was perfectly proper and pointed out that with respect to any particular holding it will always be a question of fact whether it is a ryoti land or private land and that Tribunals have been established for the hearing and disposal of such matters. Although all the lands in the estate are private lands, the R. R. Act would apply as the suit village is an estate within the meaning of that Act and the Act may have to be applied in order to work out the rights under the Act in case any portion of the land is established to be ryoti land. Ryoti lands may come into existence subsequent to the Notification either by the landholder converting a private land into a ryoti land or by his allowing a tenant to cultivate a land which was once a ryoti land. Hence the Notification under S. 3 (2) of the R. R. Act in respect of an estate cannot by itself lead to an inference that there is any ryoti land in that estate. The Notification Ex. A-1 was intended to operate and could operate only in respect of ryoti lands in the suit village. Since all the lands in the suit village are private lands of the respondent''s family, the Government have no right to reduce the rent or collect the same. Hence the failure on the part of the Government to collect rent could not give any cause of action to the respondent to sue the Government under the provisions of the R. R. Act.

4. In Rajah of Bobbili v. State of Madras (1952) 1 M.L.J. 174=65 L. W. 37 it has been pointed out that Under the R. R. Act the Government is as it were a statutory agent of the land-holder for collection. In C. M. A, No. 108 of 1960 Ganapatia Pillai, J. held that the suit by a landholder against the Government to enforce his claim under S. 3 (4) of the R. R. Act is really a suit for money had and received, viz., for recovery of specific sums of money collected by the State and not paid over to the landholder and that beyond this no duty attaches to the State as an agent as understood in common law and no such liability could be enforced by a suit for accounts. The learned Advocate for the respondent could not show how the Notification Ex. A-1 prevented the respondent from collecting the rents due from the tenants cultivating his private lands. It is clear from Exs. A-2, A-1 and A-3 etc., that they relate to the collection of rents due only in respect of ryoti lands. There was nothing to prevent the respondent-plaintiff from collecting the rent on his private lands. Even if the Government had collected the rents due from the tenants in occupation of private lands by mistake or under coercion, it would not be a defence for the tenants to an action by the respondent-plaintiff for recovery of rent. The only remedy for the tenants in such a case would be to recover the amount from the Government by virtue of S. 72 of the Contract Act.

5. We asked Sri V. Vedanthachariar, the learned Advocate for the respondent-plaintiff, to formulate the basis of his claim and he stated at first that it was a suit for damages for trespass and when he was unable to substantiate it, he sought to sustain his claim on the principles of quasi trust under S. 94 of the Indian Trusts Act. In Salmond on the ''Law of Torts'', Thirteenth Edition, at page 7 it is stated that the term trespass has been used by lawyers and laymen in three senses of varying degrees of generality. (1) In its widest and original signification it includes any wrongful act -any infringement of transgression of the rule of right. But this meaning never obtained recognition in the technical language of the law and is now archaic even in popular speech. In a second and narrower signification-its true legal sense-the term means any legal wrong for which the appropriate remedy was a suit of trespass, viz., any direct and forcible injury to person, land or chattels. The third and narrowest meaning of the term is that in which, in accordance with popular speech, it is limited to one particular kind of trespass in the second sense, viz., the tort of trespass to land. Trespass is a wrong to another''s possession. The possession of the lands in the suit village is with the tenants and the alleged interference by the Government issuing Notification Ex. A-1 and proclaiming it in the village could not constitute a trespass in law and it could not have been remedied under the old law by the action of trespass and If at all it could be tort it could only be that of trespass on case. Further, the remedy for tortious liability is a suit for damages and not a suit for accounts. We are unable to appreciate the argument of the learned Advocate for the respondent that he could not estimate the damages in this case as damages are at large.

6. The learned Advocate-General referred to the decisions in Director of

Rationing and Distrn. v. Corporation of Calcutta 1961 S.C.J. 406 and State of Rajasthan v. Mst. Vidhyawati AIR 1962 S.C. 931 and contended that the State could not be held liable for acts done in the exercise of its sovereign powers. In the first case it was pointed out that the Government was performing one of its governmental functions and that the Government could not be made actionable for the same. In the present case, the Government could claim to have validly acted in the exercise of their powers or within the statutory authority conferred on them only if they acted bona fide within the scope of the R. R. Act. As pointed out in Salmond on the ''Law of Tort''s Thirteenth Edition at page 57 when a statute specially authorises a certain act to be done by a certain person, which would otherwise be unlawful and actionable, no action will lie at the suit of any person for the doing of that act. But this defence would fail if the power conferred by the statute is not exercised bona fide or in good faith and in accordance with the formalities prescribed by the statute or the power is exercised negligently. But the respondent-plaintiff has not alleged or proved the necessary facts to base his claim on such principles. In fact the suit notice Ex. A-33 also proceeds on the same basis as the plaint. It is clear from the Supreme Court decision in Amarnath Dogra v. The Union of India C. A. No. 417 of 1961 that a suit against the Government most fail if the cause of action alleged in the plaint is different from the cause of action mentioned in the suit notice issued under S. 80, C. P. C.

6. The contention of the learned Advocate for the respondent-plaintiff that the suit claim could be sustained under S. 94 of the Indian Trusts Act on the principles of constructive trust does not deserve serious consideration. The Government did not have possession of the suit estate or actually collect any rent from any of the tenants. We have already pointed out that even if the Government had mistakenly collected the rents from the tenants in occupation of private lands in the suit estate, the remedy of the respondent-plaintiff was only to proceed against the tenants and that the tenants alone could recover the amount from the Government. Illustration (b) to S. 94 of the Indian Trusts Act relied on by the learned Advocate for the plaintiff-respondent cannot really help him as the Government did not assume the character of a trustee even by mistake. It is needless to point out that the plea of constructive trust is inconsistent with the plea of tortious liability urged by the learned Advocate for the respondent. Further even this plea was not put forward either in the suit notice or in the plaint. Thus the plaintiff has no cause of action in this suit to sue for accounts or make the State of Madras responsible for rent and arrears due from the tenants of the suit village either on the ground that they were collected or on the ground that they ought to have been collected during the period 18-7-1950 to 11-1-1954. The appeal is allowed and the suit of the respond-plaintiff is dismissed with costs of this Court and Courts below.

